

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
Charleston

ELTON E. BRYAN,

Petitioner

Civil Action No. 2:10-cv-01196

v.

UNITED STATES OF AMERICA

Respondent

**Petitioner's Motion for
Oral Argument**

Comes now Elton E. Bryan, Petitioner in the above-styled case, and requests this Honorable Court to afford him an oral presentation in this case upon the following grounds:

1. This is not a standard collateral attack on a federal conviction. This case is extraordinary in that the Petitioner was convicted of two separate crimes, to-wit (1) mail and wire fraud through deprivation of his honest services and (2) insider trading under the "misappropriation theory."
2. The Fourth Circuit, on direct appeal, declared that the "misappropriation theory" was not a valid theory for prosecution for insider trading in the Fourth Circuit and reversed Petitioner's conviction on those counts.
3. Recently in the *Skilling* case, the Supreme Court of the United States decided that mail fraud and wire fraud predicated on deprivation of honest services are limited to

cases where a government official takes either a bribe or kickback. Petitioner Bryan did neither.

4. Thus, this case is distinguished from virtually all other cases involving collateral attacks in that two of the three “crimes” for which Petitioner was tried were not crimes at the time he was tried.
5. The transcript in this case covers seven volumes and the trial took roughly two weeks. Mr. Ellis, on brief for the Government now, actually tried the case and made the closing argument for the Government. Petitioner’s counsel was intimately involved with watching the case as it unfolded and wrote a *West Virginia Law Review* article about the insider trading prosecution.
6. Because the transcript is extensive, and because both counsel knew about the case at the time it was being tried and have now familiarized themselves once more with the relevant portions of the transcript, undersigned counsel believes that an oral argument during which the Court can ask specific questions and be led to specific parts of the transcript will be valuable to the Court
7. Counsel is authorized to say that the Government does not join in this motion, but that the Government does not oppose the motion either.

Respectfully submitted
Petitioner, by counsel

/s/ Richard Neely
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
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Petitioner

2:93-CR-00898

v.

UNITED STATES OF AMERICA

Respondent

CERTIFICATE OF SERVICE

I, Richard Neely, counsel for Petitioner, do hereby certify that I served the foregoing Motion for Oral Presentation upon the following members of the staff of the United States Attorney's Office for the Southern District of West Virginia, to-wit:

Hon. R. Booth Goodwin, II
United States Attorney
Hunter Paul Smith, Jr., Esq.
Assistant United States Attorney
Larry R. Ellis, Esq.
Assistant United States Attorney

by filing same electronically using the United States District Court's electronic filing system operated by the Clerk's office on the 18th day of January, 2011.

/s/ Richard Neely
Richard Neely
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